

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

UNITED STATES OF AMERICA

v.

JUSTIN RYAN SERNA

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No. 2:15-cr-652

MOTION FOR COURT APPOINTED COUNSEL

The defendant, JUSTIN RYAN SERNA, through his father, has sent a letter to the warden, requesting a reduction in sentence/compassionate release. The warden denied his request, and Mr. Serna intends to challenge the decision and appeal to the district court by filing a motion under Section 603(b) (“Increasing the Use and Transparency of Compassionate Release”) of the First Step Act of 2018. Mr. Serna, through his father, has contacted the Federal Public Defenders office seeking assistance in obtaining compassionate release.

I.

Mr. Serna was previously represented by retained counsel but after some six years in prison, his family advises he is indigent and lacks any funds to pay a lawyer. It appears that Mr. Serna may be eligible for relief under 18 U.S.C. § 3582(c)(1)(A).

II.

In 2015, Mr. Serna pleaded guilty to sexual exploitation of a child, in violation of 18 U.S.C. § 2251(a) and 2251(e), and was sentenced to serve a 180-month prison term. According to the federal Bureau of Prisons, he is due for release on April 24, 2028.

Under the First Step Act, a district court can reduce a term of imprisonment for various health related reasons and if “extraordinary and compelling reasons” warrant a reduction. See 18 U.S.C. § 3582(c)(1)(A). A defendant can file a motion to reduce if he has not received a response to a request for release from the warden within 30 days or the bureau of prisons has conclusively denied relief within that time period. Without regard to the merits of Mr. Serna’s individual request, numerous courts have determined that release may be warranted during the COVID-19 pandemic if the individual demonstrates that he is particularly at risk of developing a serious illness.

In his letter to the warden, Mr. Serna indicates that he was exposed to the bacteria that causes tuberculosis (TB) when he was a child. He was given medication to keep him from becoming ill during his childhood. While latent TB may remain in the body and cause no symptoms, it may turn into active TB. If the latent TB becomes active, Mr. Serna could develop symptoms that include coughing, chest pain or pain with breathing or coughing, unintentional weight loss, fatigue, fever,

night sweats, chills, loss of appetite. These symptoms combined with the symptoms of COVID-19, should he contract the virus, could put Mr. Serna's health in serious jeopardy.

Mr. Serna is currently incarcerated at the Beaumont Low FCI. This facility has seen a serious outbreak of COVID-19 cases. According to the Bureau of Prisons, the facility currently has 331 inmates who have tested positive for the virus and one staff member who has tested positive.

Mr. Serna has taken steps on his own to seek relief from the Bureau of Prisons. He reports that he was denied compassionate release from the warden and advised that he may attempt to utilize the administrative remedy program. Mr. Serna intends to file a motion with the district court for compassionate release.

III.

This Court has the authority to appoint counsel to assist a defendant in matters ancillary to the criminal proceeding. *See* 18 U.S.C. § 3006A. Counsel can provide essential assistance in obtaining the necessary medical and sentencing records, in consulting with the United States Attorney's office and in preparing an argument for release.

It is therefore requested that the Court appoint the Federal Public Defender to represent Mr. Serna in connection with his motion for compassionate release, and that this office be given access to Mr. Serna's PSR, other sentencing materials,

medical records and other prison records so that counsel can assist Mr. Serna in pursuing his motion.

Respectfully submitted,

/s/ Marjorie A. Meyers
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By: /s/ Lila Michelle Garza
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CERTIFICATE OF CONFERENCE

I, Lila Garza, certify that Assistant United States Attorney Michael Hess has advised that the government does not oppose appointment of counsel for Mr. Serna but this is not to be construed as an agreement that Mr. Serna is entitled to relief.

/s/ Lila Gaza
LILA GARZA

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ORDER

Pursuant to 18 U.S.C. § 3582(c)(1), the Federal Public Defender is hereby appointed to represent Defendant JUSTIN SERNA in connection with his request to appeal the denial of his request to the warden of Beaumont Low FCI for compassionate release and his intention to file a motion to the district court for compassionate release. The Federal Public Defender shall be given access to Defendant's Presentence Report, any other sentencing materials pertaining to Defendant, and any prison reports concerning the defendant's health and conduct in prison.

SIGNED at _____, Texas on _____, 2020.

UNITED STATES DISTRICT JUDGE